



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Carmen Rubio, Commissioner
Rebecca Esau, Director
Phone: (503) 823-7310
TTY: (503) 823-6868
www.portland.gov/bds

Date: April 3, 2023
To: Interested Person
From: Kate Green, Land Use Services
503-865-6428 / Kate.Green@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision.

The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 22-138259 ENM

GENERAL INFORMATION

Applicant: Otak, Inc (contact: Steven McAtee)
808 SW 3rd Avenue #800, Portland OR 97204
steven.mcatee@otak.com / 503-415-2376

Owner: HD Cardinell LLC
1619 NE Killingsworth Street, Suite A, Portland OR 97211

Owners Agent: Mark Vuong, Hugh Development
1619 NE Killingsworth Street Suite A, Portland OR 97211

Site Address: 1297 SW CARDINELL DRIVE
Legal Description: BLOCK 284 LOT 5-8 TL 5600, PORTLAND; TL 5400 0.72 ACRES, SECTION 04 1S 1E; TL 5500 0.16 ACRES, SECTION 04 1S 1E
Tax Account No.: R667731050, R991040440, R991040820
State ID No.: 1S1E04DB 05600, 1S1E04DB 05400, 1S1E04DB 05500
Quarter Section: 3228

Neighborhood: Goose Hollow, contact at board@goosehollow.org
Business District: None
District Coalition: Neighbors West/Northwest, contact Darlene Urban Garrett at darlene@nwnw.org

Plan District: None
Other Designations: landslide hazard; wildlands fire hazard; drainageway; environmental resource site 113, *Southwest Hills Resource Protection Plan*; scenic resource site CC-SW31, *Central City 2035, Scenic Resources Protection Plan*

Zoning: Residential Multi-Dwelling 1 (RM1)
Residential Multi-Dwelling 2 (RM2)
Environmental Conservation (c)
Scenic (s)

Case Type: Environmental Review (EN)

Modification (M)

Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal: The applicant proposes to construct a new 7-story condominium in the southeast corner of the project site abutting SW Cardinell Drive and a public stairway. The building is proposed to house 17-residential units, indoor and outdoor recreation areas, parking areas and utility/service rooms. The top of the building is proposed to include a green roof and mechanical and elevator equipment.

The development is proposed to be situated within the environmental and scenic overlays on the subject site. Development within these overlay zones must meet specific standards to be allowed outright. The applicant indicates the proposal will meet the scenic overlay standards (33.480.040). However, the proposal does not meet the maximum disturbance area standard (33.430.140.A), so the applicant has requested an **Environmental Review** to allow for a 15,600 square foot building footprint within an approximately 22,711 square foot disturbance area.

The proposal also includes sidewalk improvements within the Cardinell Drive right-of-way, and driveways, walkways, outfalls, utilities, and the removal of 5 trees from the subject property. The applicant notes a Public Works Alternative Review (22-134267 PW) has been approved to allow a curb-tight sidewalk along the Cardinell Drive and no improvements to the site frontages along SW College Street or SW 13th Avenue. The applicant also notes an existing retaining wall (near the center of the site) is proposed to be altered to accommodate the proposed building. The applicant notes these alterations and all new construction activities will be over 30-feet from the onsite drainageway.

Additionally, the applicant requests an Environmental **Modification** to the following base (RM1) zone development standard(s):

- Building height (33.120.215): The applicant requests an increase in the allowed building height from 35-feet to 75-feet.

The applicant removed the request for a reduction in the required 5-foot side (south) building setback to allow a planter to be located zero feet from the property line, and intends to use a setback projection exception for structures that are not over 2-½ feet above grade (33.120.280.E.2.b). At this time, the project plans show a planter with walls that are over 2-½ feet above grade, so the permit plans will need to be revised to reflect the allowed exception.

The applicant notes a similar 36-unit development was approved through LU 05-128719 EV EN M and LU 17-102096 EN M.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

- Environmental Review, 33.430.250.A and E.
- Environmental Modifications, 33.430.280.

ANALYSIS

Site and Vicinity: The approximately 59,733 square-foot project site consists of 3 vacant parcels situated on a steep hillside between Interstate 405 and Marquam Hill, just southwest of downtown Portland.

The site contains a series of slopes and a ravine with an intermittent seasonal drainageway and is vacant, except for a retaining wall of unknown origins near the center of the site. The site and surrounding lands are within a designated landslide hazard area and nearly the entire subject site is within the Environmental Conservation overlay zone. The property slopes down steeply from the southeast corner, at the intersection of SW Cardinell Drive and a public stairway, to the northwest corner, near the intersection of SW College Street and SW 13th Avenue. Primary vehicular access to the site is from SW Cardinell Drive, though vehicle access to the northernmost portions of the site is available from SW 13th Avenue or SW College Street.

The site was historically a mixed deciduous-coniferous forest. Over the years, trees have been removed or topped across the site. Much of the proposed development area, in the southeast portion of the site, has been altered over the years, due to tree removal and grading associated with previously approved development or tree removal violations. That area of the site is currently dominated by Himalayan blackberry and English ivy under the remaining tree canopy.

The applicant has noted: *the functional values of the resource on the western and northern portion of the site have improved beyond the pre-disturbance condition; and [t]he forested upland quality has been substantially increased through the on-site mitigation within the planned Conservation Easement.* The City Council decision for LU 05-128719 EV EN M required that the noted *conservation easement* or a *covenant not to build* to be established prior to issuance of permits. At this time, the applicant has not provided documentation that an easement or covenant has been established.

The nearby development includes low-density detached residential development on R10 zoned properties to the east, south and west; and a mix of multi-dwelling structures (including a multi-story condominium and several triplexes and six-plexes) and single-dwelling homes on the multi-dwelling zoned properties (RM1, RM2, RM4) to the north.

Environmental Resources: The site is located within Resource Site 113: Marquam Hill Ravine of the *Southwest Hills Resource Protection Plan*. The inventoried site is characterized by steep, unstable slopes and contains three habitat classification types: upland coniferous, broadleaf deciduous forest; riverine, upper perennial/intermittent streambeds; and palustrine, forested wetlands.

Resource Site 113 is also noted for including natural vegetation, which helps maintain soil and slope stability, and gross removal of vegetation has been noted as a major contributing cause of land instability on the slopes of the Portland Hills. The resource plan further notes that the visual greenery of the open space contributes to the overall character of the West Hills and image of the city.

Due to prior tree removal and the current preponderance of nuisance vegetation, some of the subject site's wildlife habitat and scenic values have been compromised; nevertheless, a seasonal creek, which crosses the subject site, and the remaining trees and newer native vegetation continue to contribute to the scenic and habitat values of Resource Site 113.

Scenic Resources: A Scenic Viewpoint CC-SW31 (Central City 2035, Scenic Resources Protection Plan, August 10, 2020) is designated on SW Cardinell Drive, at the top of the public stairway abutting the east side of the subject site, and extends over the eastern area of the subject site. Scenic Resource CC-SW31 is noted for providing views of the downtown skyline, Mt St Helens, eastern foothills, and the Fremont Bridge. The proposal includes a request to remove trees and location a portion of the building within the designated scenic resource view corridor. There is no height limit for this view corridor that restricts development on private property. The plan recognizes "[d]evelopment of the adjacent undeveloped private property [the subject site] just west of this viewpoint will affect the view".

Zoning: The site zoning includes **Residential Multi-Dwelling 1 (RM1)** and **Residential Multi-Dwelling 2 (RM2)**; **Environmental Conservation (c)**; and **Scenic (s)**.

The Residential Multi-Dwelling zones are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing.

*The **RM1 zone** is a low-scale multi-dwelling zone that is generally applied in locations intended to provide a transition in scale to single-dwelling residential areas, such as the edges of mixed-use centers and civic corridors, and along or near neighborhood corridors.*

The **RM2 zone** is a medium-scale multi-dwelling zone that is generally applied in and around a variety of centers and corridors that are well-served by transit.

Environmental zones protect resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. These regulations also help meet other City goals, along with other regional, state, and federal goals and regulations. The environmental regulations also carry out Comprehensive Plan policies and objectives.

The **Environmental Conservation overlay** conserves important resources and functional values in areas where the resources and functional values can be protected while allowing environmentally sensitive urban development.

The **Scenic overlay** is intended to:

- Protect Portland's significant scenic resources that provide benefits to the public as identified by the City in the Scenic Resources Protection Plan (1991) and the Central City Scenic Resources Protection Plan (2017);
- Enhance the appearance of Portland to make it a better place to live and work;
- Create attractive entrance ways to Portland and its districts;
- Improve Portland's economic vitality by enhancing the City's attractiveness to its citizens and to visitors; and
- Implement the scenic resource policies, goals, and objectives of Portland's Comprehensive Plan.

Land Use History: City records indicate that prior land use reviews include the following:

- LU 17-102096 EN M: Environmental Review and Modification Approved construction of a 36-unit building with 16,559 sf footprint, public street, alley, stormwater improvements, retaining walls, and utility connections. Review included modifications to allowed height. This 2017 decision is still valid until January 1, 2024, per a city council extension that was granted to final decisions that became effective between March 8, 2017 and January 1, 2021, per 33.730.130.B.1.b. No changes to the conditions required by prior violation reviews were addressed in the 2017 case and none are requested in this pending review.
- LU 16-189632 EV: Environmental Violation review for unauthorized cutting or topping of trees in 2013 and revisions to plantings required by prior violation reviews. Requires removal of non-native invasive plants, remediation plantings, and five years of monitoring.
- 15-107863 EV: Environmental Violation review for tree cutting. This application was cancelled as an "unnecessary review".
- LU 05-148932 ZE: Zoning map correction to remove environmental protection ("p") overlay from this and adjacent sites. The current proposal has no effect on this land use review.
- LU 05-128719 EV EN M: Approved construction of a 36-unit building with 16,559 sf footprint, public street, alley, stormwater improvements, retaining walls, and utility connections. Review included modifications to allowed height. This review approved changes to mitigation plantings required in a previous review (LU 03-177039 EV) and required that a conservation easement or no-build covenant be established prior the issuance permits. Required ten years of mitigation monitoring. LU 16-189632 EV revised this Decision as related to the Environmental Violation review and LU 17-102096 EN M further revised this decision as related to the mitigation proposal for impacts associated with the building proposed in that review.
- LU 04-051116 ZE: Zoning map correction to remove a portion of the environmental protection ("p") overlay from the subject site and one to the south. The current proposal has no effect on this land use review.
- LU 03-177039 EV: Environmental Violation review for removal of 20 trees. Required mitigation plantings and five years of monitoring. LU 16-189632 EV revised this Decision as related to the Environmental Violation review.
- LUR 99-00990 EV: Environmental Violation review for removal of 20 trees, supplanted by LU 03-177039. LU 16-189632 EV revised this Decision as related to the Environmental Violation review.
- LUR 97-00211 EN AD – Environmental review and adjustment for constructing a multi-

family residence at the north portion of the site. Case withdrawn by applicant.

Agency Review: Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits “E” contain the complete responses.

Neighborhood Review: A *Notice of Proposal in Your Neighborhood* was mailed on July 18, 2022. Written responses have been received from two Neighborhood Association groups and eight notified property owners.

The primary concerns noted are about building height and scale of the proposed development relative to neighboring properties and the existing rights-of-way; traffic, safety impacts and emergency vehicle access on existing rights-of-way; resident and visitor parking supply; construction impacts; loss of shade and cooling due to tree removal; landslide hazards; stormwater runoff and the condition of existing retaining wall; activities on decks and patios; and insufficient implementation of remediation measures required by prior land use reviews.

Concerns were also noted about the application of the Environmental Modification Review (33.430.280) criteria instead of an Adjustment Review (33.805) criteria for the requested height exception.

BDS Staff response: *The height and scale of the building is addressed in the Environmental Modification findings below. Portland Transportation (Exhibits E2 and E2a) noted active vegetation management will be necessary to retain a safe operating condition for the driveway. Otherwise, no traffic safety, emergency access, or parking issues were noted in the responses from Portland Transportation or the Fire Bureau (Exhibits E3 and E3a). The tree removal is addressed in the Environmental Review findings below. Site Development (Exhibit E4) identified additional geotechnical studies will be required at the time of building permits to address slope stability and landslide hazards, but noted no exceptions to the proposed construction management measures. Environmental Services (Exhibit E1a) found sufficient information had been provided to demonstrate stormwater could be managed with the proposed disturbance area. Activities on the decks and patio areas are only addressed, herein, relative to the privacy impacts the building height as noted in the Environmental Modification findings. The implementation of the prior remediation efforts remains the on-going responsibility of the property owners.*

In the land use and LUBA findings for prior reviews on this site, the application of the Environmental Modification criteria was found to be allowable for the requested height increase, and BDS Staff take no exception to those prior findings.

Additionally, the applicant provided the following response to the neighborhood comments:

The Applicant appreciates the public comments and concerns regarding this Application; however, as proposed, the Application satisfies all applicable approval criteria. This letter sets forth the Applicant’s response to public comments received as of the date of this letter and supplements our letter dated November 2, 2022.

1. The proposed building complies with the maximum permitted building height requirements. If a modification is required, the requested modification is appropriate and an adjustment is not required.

The proposed building height is 25 feet as measured from the grade of the sidewalk adjacent to SW Cardinell Drive, in accordance with PCC 33.930.050.A.1.a. Thus, the Applicant maintains that no building height modification is required to construct the proposed building. To the extent that the City determines that a modification to the maximum permitted building height is required¹, a modification to the proposed building is a site-related development standard and thus the Applicant is not required to go through the adjustment process.

[¹ Note the Applicant is no longer requesting a modification to side setback requirements as referenced in a number of the public comments received.]

*Specifically, pursuant to PCC 33.430.280 “[t]he review body may consider modifications for lot dimension standards or site-related development standards as part of the environmental review process.” Such modifications “are done as part of the environmental review process and are not required to go through the adjustment process.” The City has consistently determined that modification of building height is a site-related development standard, not a use-related development standard, and can be modified through design review without an adjustment. See Type II Decision, LU 17-102096 ENM; see also Decision of the Hearings Officer, LU 10-148328 PDM (HO 4100015), (hearings officer Gregory J. Frank held that a request to increase the maximum height of a proposed residential development project by 5 feet above the district limit is a site-related development standard). LUBA ultimately agreed with the City’s interpretation of its code that height was a site-related development standard with respect to a previous iteration of this project. See *Patel v. City of Portland*, 77 Or LUBA 349 (2018). As a result, because the Applicant is requesting a modification of a site-related development standard, height, modification through the environmental review process is appropriate and an adjustment is not required.*

2. If a height modification is required, the Application meets all modification standards.

As explained in detail in the Applicant’s November 2, 2022 response to completeness letter, the applicant meets the height modification criteria in PCC 33.430.280. Under PCC 33.430.280, modifications must: 1) “result in greater protection of the resources and functional values identified on the site,” and 2) “on balance, be consistent with the purpose of the applicable regulations.”

As proposed, the Applicant is adding additional building footprint on the down-sloping portion of the subject property and not significantly above the elevation of SW Cardinell Drive. Notwithstanding the few environmental resources and their low functional value, the increased building height on the down-sloping portion of the subject property will result in a smaller building footprint, less site disturbance, and will allow the Applicant to comply with the 2016 remediation plan. This remediation plan calls for the planting of 400 trees, 600 shrubs, and 1500 plugs of groundcover on the subject property and the restoration of environmental resources on the subject property.

As identified in the November 2 letter, the two alternatives which comply with the 35-foot building height requirement result in less protection of environmental resources and functional value on a property that is largely bereft of environmental resources. Therefore, the proposed development will result in greater protection of the resources and functional values identified on the site. Any modification must also be, on balance, consistent with the purpose of the applicable regulations. Per PCC 33.120.215.A, the purpose of height regulations in multi-dwelling zones is as follows:

- *They promote a reasonable building scale and relationship of one residence to another;*
- *They promote options for privacy for neighboring properties; and*
- *They reflect the general building scale of multi-dwelling development in the City’s neighborhoods.*

The proposed building height promotes a reasonable building scale and relationship of the proposed multi-dwelling structure to other residences. Specifically, PCC 33.930.050.A.1.a, allows exceptions to the location of the base reference point for multi-dwelling structures in multi-dwelling zones such that for buildings located near a sidewalk the height is measured from that sidewalk. Thus, the PCC is concerned with the scale and relationship of multi-dwelling structures to other residences as seen from the sidewalk. The proposed building along SW Cardinell drive will only have a maximum building height of 25 feet, which is a reasonable building scale and relationship to the existing and burned down residences along SW Cardinell Drive. In fact, this building height is 10 feet less than the maximum permitted building height in the RM1 zone. Additionally, the scale and relationship of the proposed building to the rear of 1209, 1211, and 1221 SW Cardinell Drive is not relevant.²

Even so, the proposed building height as measured from the rear of the building is a reasonable scale and relationship to these buildings in accordance with the purposes of the multi-dwelling height regulations. Specifically, the RM4 zone permits a maximum building height of 100 feet.]

The requested modification also promotes options for privacy of neighboring properties. The area surrounding the proposed building includes mature trees that will be preserved and that screen the proposed building from the adjacent properties. As a result, any visual intrusion into adjacent or nearby properties is minimal.

The proposed building also reflects the general building scale of multi-dwelling development in the City's neighborhoods. As stated above, the building scale of a multi-dwelling building through the City's neighborhoods is judged by the height above the adjacent sidewalk. The proposed building is 25 feet in height as measured from the sidewalk along SW Cardinell Drive, which reflects the general building scale of a multi-dwelling development. The purpose of the height regulations in a multi-dwelling zone is not to reflect the scale of single-family residences. In addition, multi-dwelling structures in the City are permitted to have a maximum building height of up to 100 feet, including in the RM4 zone, which is located northwest of, and adjacent to, the subject property. On the down sloping portions of the subject property adjacent to the RM4 zones the proposed building has a height of 74 feet as measured from 10 feet above the lowest grade, five feet from the proposed building. This proposed height not only reflects the general building scale of multi-dwelling development in the City, but the scale of permissible adjacent multi-dwelling development.

Lastly, PCC 33.120.010, states that "[t]he development standards are generally written for development on flat, regularly shaped lots. Other situations are addressed through special standards or exceptions." As a result, the requested height modification is appropriate because the PCC specifically contemplates providing flexibility for development standards on steep or irregularly-shaped lots like the subject property.

For the reasons stated above, the requested modification is consistent with the purpose of the applicable regulations.

3. Concerns regarding construction staging are not germane to any approval criteria.

Numerous public comments raised concerns regarding construction staging and suggested conditions of approval to mitigate construction staging impacts. While PCC.800.070 allows the City to attach conditions of approval to a land use permit, they "may be applied only to ensure that the proposal will conform to the applicable approval criteria for the review or to ensure the enforcement of other City regulations." While the Applicant appreciates the public concerns, no approval criteria relates to the staging of construction. In addition, the Applicant will comply with all City regulations regarding construction staging.

4. The Application complies with the off-street parking requirements.

Comments were received regarding increased demand for on-street parking as a result of the proposed development. The Applicant appreciates these concerns and as a result is proposing 38 vehicular parking spaces on the subject property to serve 17 units. Specifically, PCC 33.266.110 only requires the Applicant to provide 1 parking space per 2 units and thus only 9 parking spaces are required for the proposed development. The Applicant is thus providing nearly four times the required parking to accommodate all visitors and guests of the proposed development in addition to all the future residents.

ZONING CODE APPROVAL CRITERIA

33.430.250 Approval Criteria for Environmental Review

An environmental review application will be approved if the review body finds that the applicant has shown that all of the applicable approval criteria are met. When

environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through .190, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

Findings: The approval criteria applicable to the proposed development include those found Section 33.430.250.A and Section 33.430.250.E. The criteria and findings for Subsections A and E are combined where they are similar. Since this activity is neither a Public Safety Facility nor a Land Division or Planned Development, the criteria in Sections 33.430.250 A.2 and A.4 do not apply and are not included.

33.430.250 A. Public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments. Within the resource areas of environmental zones, the applicant's impact evaluation must demonstrate that all of the general criteria in Paragraph A.1 and the applicable specific criteria of Paragraphs A.2, 3, or 4, below, have been met.

33.430.250 E. Other development in the Environmental Conservation zone or within the Transition Area only. In Environmental Conservation zones or for development within the Transition Area only, the applicant's impact evaluation must demonstrate that all of the following are met.

E.1 Proposed development minimizes the loss of resources and functional values, consistent with allowing those uses generally permitted or allowed in the base zone without a land use review;

Findings: These criteria apply to the proposed tree removal, new building and disturbance area within the resource area of the Environmental Conservation overlay zone. The purpose of these criteria is to recognize that some form of development is allowed, consistent with the base zone standards. Impacts of the proposed development are measured relative to the impacts associated with the development normally allowed by the base zone.

These criteria require that the applicant demonstrate that the proposed development minimizes the loss of resources and functional values consistent with the development generally permitted or allowed without a land use review.

The subject site has both RM2 and RM1 base zones. Per 33.700.070.F., *...when a site is in more than one zone, the development standards of each zone apply to the portion of the site in that zone.* No development is proposed in the RM2 zoned portion of the site, and the RM2 portion of the site is required to be retained for remediation plantings per prior land use reviews, so only the RM1 zoned portion of the site will be considered in determining the size of the “development normally allowed by the base zone”.

In this case, the RM1 zoned portion of the site is approximately 38,120 square feet in area. As such, the RM1 standards would allow for a building to have 19,060 square feet of building coverage (50 percent site area).

The applicants propose a building with 15,600 square feet of building coverage and an overall disturbance area of 22,711 square feet. The overall disturbance area is approximately 3,651 square feet over the building coverage allowed in the RM1 base zone, but the building coverage is generally consistent with the size of development that would be allowed by the RM1 base zone.

In general, the proposed building location and disturbance area are situated close to the existing SW Cardinell Drive and public stair rights-of-way, which can help to limit the disturbance area needed for vehicle and pedestrian access and public services (water, sanitary sewer and storm sewer) to the proposed building. Additionally, the proposed building location will avoid the onsite watercourse and the majority of the trees and the balance of the resource area remaining in the site.

Overall, the proposed building location and configuration help to reduce the site area to be covered by permanent development, while also avoiding significant impacts on the balance of the environmental resources on the site. Therefore, the proposal minimizes the loss of resources and functional values, consistent with allowing those uses generally permitted or allowed in the base zone without a land use review. As such, this criterion is met.

A.1. General criteria for public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments;

A.1.a. Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;

E.2. Proposed development locations, designs, and construction methods are less detrimental to identified resources and functional values than other practicable and significantly different alternatives;

Findings: These criteria require the applicant to demonstrate that alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values.

The applicant provided an alternatives analysis [Exhibit A13k, Narrative, p 50 (55/71)] as follows:

Alternative 1: *The 2006 and 2017 applications and the current application propose to construct the building at the southeast corner of the site within the environmental conservation zone. The site includes 3 tax lots zoned for multi-dwelling development (RM1 and RM2). The approved and proposed building is adjacent to SW Cardinell Drive and a public pedestrian stairway along the eastern boundary of the site. The proposed building area was cleared and there was grading and filling activity in 2008 in preparation of construction of a similar development (LU 05-128719 EV EN M); this project was never constructed.*

Alternative 2: *A second possible location for development is the northwest corner of the site at SW College St and SW 13th Ave, which is zoned RM2. SW 13th Ave is an unimproved and steeply sloped right-of-way and SW College St is a two-lane street that slopes steeply uphill. In this scenario, significant disturbance to the resources on site would be required to construct the building and provide access. While a portion of this tax lot is outside of the environmental conservation zone, the tax lot has been planted with mitigation plantings and is entirely located in a planned Conservation Easement, as required by Portland City Council in their Findings and Decision for LU 05-128719 EV EN M. This portion of the site contains thick tree cover and has been the site of mitigation/remediation plantings since 2016.*

Alternative 3: *A third possible location for development is in the center of the site, which would require significant disturbance to provide street access to either SW Cardinell or SW College St and would impact the on-site mitigation plantings and have significantly greater impacts on the environmental resources on site than the proposed location.*

Alternative 4: *Finally, the site consists of three tax lots zoned for multi-dwelling development. The applicant could choose to develop each lot with separate buildings. This approach would be permitted in the environmental conservation zone because the site is almost entirely within it. As noted earlier, the allowed disturbance area within each zone is 50 percent of the lot coverage allowance, which is 50 percent in the RM1 zone and 60-70 percent in the RM2 zone. Therefore, up to 25 percent of the RM1 zone and up to 35 percent of the RM2 zone could be disturbed for development of dwelling units by right. This would require a significant increase in disturbance area on site.*

For the reasons above, the proposed building location is the least detrimental to the site resources identified in the Southwest Hills Resource Protection Plan and mitigated/remediated through the ongoing efforts on site. The area proposed for development remains essentially devoid of functional value.

The applicant posits the proposed development has been localized to one portion of the site, where the fewest resources remain, and the proposed construction methods will allow for the construction staging areas and new development to be confined and limited to the area outside of the balance of the site. However, BDS Staff note that the application materials refer to the area outside of the proposed disturbance area as a “conservation easement”. The applicant notes this “conservation easement” was required in the 2003 and 2005 environmental violation cases. BDS Staff have provided references to those prior violation cases in the Land Use History section above. However, though those decisions call for a conservation easement or a no-build covenant, to date, the applicant has not provided any record of an easement or a covenant. This review does not include any request to modify or changes the conditions from the prior violation cases, so those conditions stand.

In any event, BDS Staff take no exception with the applicant’s assessment. As such, these criteria are met.

A.1.b. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

E.3. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

Findings: These approval criteria require the protection of resources outside of the proposed disturbance area from impacts related to the proposal, such as damage to vegetation, erosion of soils off the site, and downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site.

The project narrative (Exhibit A13k) indicates: *A construction management plan is included as Sheet EC1.0 identifies measures to protect the Conservation Easement area include the installation of sediment fencing and straw wattles along the perimeter of the disturbance area. Trees will be protected by tree protection fencing as required by Title 11. Erosion control measures include installation of the above-noted sediment fencing and straw wattles, as well as a concrete washout and inlet protection. Construction equipment will be restricted to the southern portion of the site, which will be prepared with gravel and serve as the construction entrance and staging area. Construction and ground-disturbing activities on site will be limited to May 1 to September 30.*

The proposed design and construction methods include steel frame construction over concrete retaining walls and soil nail shoring. These construction methods require the least staging areas and will allow all of the disturbance and development on the site to be limited to the area outside of the Conservation Easement. Retaining walls would be required for any development on the site due to the steep slopes of more than 20 percent. The proposed building location and footprint minimize impacts on the site.

The proposed development has no impact on the resources and functional values in areas to be left undisturbed. All development on the site is located within the footprint and disturbance area approved by and mitigated per earlier environmental reviews. The undisturbed portion of the site will be protected by a recorded Conservation Easement prior to issuance of building permits, and no development is proposed in this area.

A geotechnical report verifying feasibility of the proposed development within the disturbance area is included as Appendix D.

The project plans show the extent of the proposed development will extend directly up to the proposed disturbance area limits, which is generally impractical, since space needs to be allocated for workers and equipment to install the proposed features. In this case, however, the applicant indicates the work can be accomplished within the proposed disturbance limits using the construction methods outlined in the project submittal. The applicant also notes that sediment and tree protection fencing (per Title 11) will be provided to restrict construction activities to the proposed disturbance area. The project arborist (Exhibit A13b) notes the tree protection fencing should be installed along the “conservation easement line” to protect the existing conditions in the resource area, and provides two different options for the fencing installation; one with 6-foot high steel fencing on concrete blocks and another with 6-foot metal fencing secured to the ground with 8-foot metal posts. BDS Staff understand the arborist’s reference to the “conservation easement line” to correspond to the disturbance limits noted on other project plans and will apply a condition requiring that the 6-foot tall chain-link fencing must be secured to the ground with 8-foot tall metal posts, prior to any site work, to provide a physical barrier to the construction limits and the designated disturbance area.

With the implementation of this condition and the other construction staging and management measures, including erosion controls and stormwater management, as outlined in the submittal (Exhibits A13k), the work area limits will be confined to the designated disturbance area and erosion or storm runoff will be managed within those areas. Likewise, trees and other environmental resources within the balance of the site shall be left undisturbed. Accordingly, these criteria are met.

A.1.c. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

E.4. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

Findings: These criteria require the applicant to quantify unavoidable impacts and propose mitigation that is proportional to the impacts, as well as comparable in character, so as to replace lost resource functions and values.

The applicant has identified the project impacts will include the removal of 5 native trees and the permanent disturbance of 22,711 square feet of resource area. These impacts will result in a loss of organic input, a loss of slope stabilization functions, and a loss of wildlife habitat functions and of forest structure. To mitigate for these impacts, the applicant proposes to ensure restoration efforts for an area equivalent to the permanent impact area.

As noted in the prior land use cases, due the extent of the required remediation for prior violations on the site, there are limited opportunities to provide additional mitigation measures on the subject properties. Therefore, the applicants have proposed no onsite mitigation measures. Instead, the applicants propose to mitigate the permanent disturbance area (22,711 square feet) off-site and have proposed making a \$40,000 contribution to the *Forest Park Conservancy* (Exhibit A13h) to support one or more habitat restoration projects within the greater Forest Park ecosystem, which includes lands within Forest Park or on nearby land managed by the Forest Park Conservancy that are within the Willamette River Watershed. Identified restoration efforts are to remove non-native species and plant native species, to provide habitat improvements to headwater streams that provide cool, clean water to the lower stream temperatures in the Willamette River, and to provide critical habitat for native flora and fauna.

The habitat restoration projects described in the *Forest Park Conservancy* memo generally align with the types of measures allowable for mitigation. However, BDS staff informed the applicants the contribution funds will need to be applied toward direct project implementation and not to project planning or overhead costs. As such, the funds must be applied toward the materials, equipment, and staff time needed to purchase, install, maintain and monitor the

restoration efforts. Accordingly, \$5,341.30 currently allocated for project planning and overhead may only be applied toward the direct project implementation.

Additionally, the narrative indicates the proposal includes nuisance plant removal efforts; however, no information is provided to address the nuisance plant removal standard (33.430.140.L), which requires the removal of nuisance plants from an area equivalent to at least 50% of disturbance area, which, in this case, would be approximately 11,256 square feet. The prior land use decisions call for the removal of nuisance plants from the balance of the site, so it is reasonable to consider an off-site option to fulfill this requirement.

Further, the applicant notes the amount of the mitigation contribution (\$40,000) is intended to align with the payment amount (\$37,897) identified in the 2017 case (LU 17-102096 EN M). However, based on the Consumer Price Index Inflation Calculator from the United States Bureau of Labor Statistics [[CPI Inflation Calculator \(bls.gov\)](https://www.bls.gov/calculators/cpi-inflation-calculator)], the valuation of \$37,897 in 2017 dollars would now be equivalent to \$46,688 in 2023 dollars.

Based on these factors, the mitigation contribution must be recalculated to ensure funds are only distributed to direct project implementation measures to offset 22,711 square feet of permanent disturbance area and to account for the valuation change between 2017 and 2023 dollars.

At this time, the applicant has not elected to provide a revised budget. So, to find that these criteria will be met, BDS Staff will apply the following condition:

Prior to issuance of the building permit, a payment of \$46,688 shall be made to the *Forest Park Conservancy* for direct project implementation of measures to remove canopy weeds, improve soil composition, and to install native plantings within an at least 22,711 square foot area within the Forest Park ecosystem within the Willamette River watershed. Direct project implementation shall consist of: materials, equipment, and staff time needed to remove nuisance plant species and to purchase, install, maintain and monitor the restoration efforts.

Further, though the applicant has proposed an extensive planting scheme around the perimeter of the proposed building, many of the proposed plantings are non-native species, and, in some cases, nuisance species, which are prohibited. Additionally, several of the tree species proposed to replace the 5 native trees proposed for removal, within the environmental and scenic overlays, are cultivars of native species, which are not allowable, per the replacement planting standards (33.430.140.J/Table 430-3), which require plantings to be native species, as identified in the *Portland Plant List*. As such, the plant materials will necessarily need to change. This also presents an opportunity to add more native species to the developed portion of the site, which could help to mitigate for the project impacts and contribute to more habitat and scenic resource values directly on the subject site. As such, a condition will be applied, which requires a minimum of 25 percent of the plantings used for the perimeter plantings, within the development area, to be native species from the *Portland Plant List*. The tree species that must be changed to meet the replacement standards may be applied toward this requirement.

With the implementation of these conditions, adequate funds will be provided for direct project implementation of the noted mitigation efforts to offset the project impacts at suitable off-site locations, and some native planting measures, within the development area, will contribute to improving the habitat and scenic values on the site as a whole; accordingly, these criteria will be met.

A.1.d. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

E.5. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

A.1.e. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

E.6. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

Findings: As noted above, the proposed off-site mitigation will consist of a contribution to the *Forest Park Conservancy*, which is an organization that is involved in restoration efforts in the Forest Park ecosystem. With documentation of a payment to that organization in lieu of on-site mitigation, the applicant will contribute to the on-going resource enhance efforts to improve the conditions of significant resource areas within the Willamette River watershed. Further, with some additional native plantings within the development area, this will contribute to the scenic and habitat values directly on the site. As such, these criteria will be met.

A.3. Rights-of-way, driveways, walkways, outfalls, and utilities;

A.3.a. The location, design, and construction method of any outfall or utility proposed within the resource area of an environmental protection zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the environmental protection zone;

Findings: No environmental protection zoning is located on the subject site, so this criterion does not apply.

A.3.b. There will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish; and

Findings: The on-site watercourse is within the Willamette River watershed, which supports many fish species; however, there are no known fish species that migrate, rear, feed or spawn on the subject property. Further, construction limits and erosion control measures will be required, which should limit any impacts to the onsite watercourse and prevent sediment or runoff from leaving the site or impacting the Willamette River. With the implementation of those construction management methods, this criterion will be met.

A.3.c. Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts.

Findings: No water bodies are proposed to be crossed, so this criterion does not apply.

MODIFICATIONS

33.430.280 Modifications That Will Better Meet Environmental Review Requirements

The review body may consider modifications for lot dimension standards or site-related development standards as part of the environmental review process. The review body may not consider modifications to standards for which adjustments are prohibited. Modifications are done as part of the environmental review process and are not required to go through the adjustment process. Adjustments to use-related development standards (such as floor-area ratios, intensity of use, size of the use, number of units, or concentration of uses) are subject to the adjustment process of Chapter 33.805. In order to approve these modifications, the review body must find that the development will result in greater protection of the resources and functional values

identified on the site and will, on balance, be consistent with the purpose of the applicable regulations. For modifications to lot dimension standards, the review body must also find that the development will not significantly detract from the livability or appearance of the area.

Findings: An Environmental Modification is requested to increase the allowable RM1 building height from 35 feet to 75 feet. In the RM1 zone, the base height is 35 feet (33.120.215) and there is a “step-down” height of 35 feet where the building is within 25 feet of a lot line abutting RF-R2.5 zones or within 15 feet of a lot line across a local service street from RF-R2.5 zones (33.120.215.B.2).

To meet this criterion, the applicant must demonstrate the proposal will result in greater protection of resources and functional values identified on the site and will, on balance, be consistent with the purpose of the height regulations.

Resources and functional values found on the site include wildlife habitat, groundwater recharge, and scenic resources. Inventory Site Number 113: Marquam Hill of the *Southwest Hills Resource Protection Plan* describes view resources as including views into the wooded ravines and hilltops as well as views out to the city. Marquam Hill is a prominent hill within the West Hills. The area open space contributes to the image of the West Hills as a whole.

A designated viewpoint (CC-SW31) is situated at the intersection of the public pedestrian corridor, which abuts the east side of the subject property, and SW Cardinell. A portion of the proposed development area is within the scenic overlay that includes the noted viewpoint.

As outlined in 33.120.215, the height standards serve several purposes:

- They promote a reasonable building scale and relationship of one residence to another;
- They promote options for privacy for neighboring properties; and
- They reflect the general building scale of multi-dwelling development in the City's neighborhoods.

The applicant provided several responses to these criteria (Exhibits A9a, A13k, A13p, A15b).

On one hand, the applicant asserts a height modification is not needed, based on the height measurement taken from the SW Cardinell frontage, as follows:

The proposed building height is 25 feet as measured from grade of the sidewalk adjacent to SW Cardinell Drive, in accordance with PCC 33.930.050.A.1.a. Specifically, the PCC provides an alternative method for determining the base reference point for multi-dwelling structures in multi-dwelling zones. In this instance, the base reference point is determined based on the lowest and highest grade of the “sidewalk” located within 25 feet of the building. Per PCC 33.910.010 “[w]ords used in the zoning code have their normal dictionary meaning unless they are listed in 33.910.030...” Because “sidewalk” is not defined in the PCC, the normal dictionary definition is “a usually paved walk for pedestrians at the side of a street.”¹ [1 <https://www.merriam-webster.com/dictionary/sidewalk>]. Thus, the only sidewalk located within 25 feet of the proposed building is the SW Cardinell Drive sidewalk.

As shown on Sheet C1.0 “Preliminary Civil Site Plan,” the proposed building is located within 25 feet of SW Cardinell Drive and the lowest grade along SW Cardinell Drive within 25 feet of the proposed building is less than 10 feet below the highest point of the sidewalk grade. Thus, the base reference point is the highest grade of the sidewalk (i.e. 350 feet in elevation).

As shown on Sheet A3.1, as measured from the base reference point, the proposed building has a maximum height of 25 feet, which complies with the maximum building height requirements in the RM1 zone. See PCC 33.120.215, Table 120-3.

On the other hand, the applicants contend the requested height modification will afford greater protection of the environmental resources and be consistent with the purpose of the height regulations, as follows:

To the extent the City disagrees with the above calculations regarding the base reference point, the maximum building height is 74 feet, as measured in accordance with PCC 33.930.050.A.1.b. See Sheet A3.2. The Applicant is providing this calculation of building height out of an abundance of caution and hereby requests a modification to the proposed building to the extent the City deems it necessary. The Applicant does not concede that the correct base reference point is established pursuant to PCC 33.930.050.A.1.a; however, the Applicant has revised its narrative to address the height modification criteria contained in PCC 33.430.280, which is excerpted below.

The Applicant is requesting a height modification should the City disagree that the building satisfies the height limit, as described above. As proposed, the Applicant is adding additional building footprint on the down-sloping portion of the subject property and not significantly above the elevation of SW Cardinell Drive. As a practical matter, while there may be environmental resources and functional values identified on the subject property, as stated in the July 22, 2016 memorandum submitted for LU 16-189632 EV and prepared by Wallace Leake of Environmental Science & Assessment (ES&A) LLC and Peter Finley Fry, the “site has few of the values or resources... and when they are present their relative function is low when compared to a typical healthy upland forest.”

Notwithstanding the few environmental resources and their low functional value, the increased building height on the down-sloping portion of the subject property will result in a smaller building footprint, less site disturbance, and will allow the Applicant to comply with the 2016 remediation plan. This remediation plan calls for the planting of 400 trees, 600 shrubs, and 1500 plugs of groundcover on the subject property and the restoration of environmental resources on the subject property.

As stated in the alternative analysis submitted with this application, there are two options for complying with the 35-foot building height requirement.

[Option] One: The Applicant would be required to construct a long narrow building, with a larger building footprint, that encroaches into the conservation easement area and the small portion of undisturbed forested area on the subject property. Thus, this alternative would result in less protection of environmental resources and functional values on a property that is largely bereft of environmental resources.

[Option] Two: The Applicant would be required to move the building further north along the downhill portion of the subject property. While this would result in a shorter building, it would also result in greater site disturbance because of the need for steep grading to access the proposed building. Thus, this alternative will result in less protection of the resources and functional values identified on the subject property than the proposed project.

The applicant also proposed further revisions to the proposal, based on discussion with City Staff, as follows: In an effort to mitigate the impact of the building on neighboring development, plans have been revised to show a design change affecting the top floor and roof of the proposed building. The top floor has been setback between seven (7) ft. and 10 ft. from the northern building façade. This will serve to reduce the building mass and appearance from adjacent properties. See Sheets A2.7 and A2.8 for details.

Landscaping plan and renderings have been updated. Four western red cedar trees, each with a mature height of 50 ft. and mature width of 15 ft. will be planted along the eastern property boundary to reduce the visual impact of the building on those residents to the east. See Sheets L1.00, L2.00, and renderings beginning on Sheet A5.1, and Sheet EX1.4.

As noted in the applicant’s submittal, per 33.700.070.D.1, [w]ords used in the zoning code have their dictionary meaning unless they are listed in Chapter 33.910, Definitions. Words listed in the Definitions chapter have the specific meaning stated, unless the context clearly indicates another meaning. Since the Zoning Code (33.910) does not provide a specific definition for “sidewalk”;

BDS Staff are instructed to look at the dictionary definition. In addition to the dictionary definition provided by the applicant, BDS Staff offer the following definition from Webster's II New College Dictionary, 1995: *Sidewalk: A walk for pedestrians along the side of a road.*

Additionally, BDS Staff find the following excerpts from the Zoning Code-Title 33 and Public Improvements-Title 17 include the term "sidewalk" and offer guidance on the meaning in the context of the rights-of-way abutting the project site:

Pedestrian Connection. *A pedestrian connection generally provides a through connection for bicyclists and pedestrians between two streets or two lots. It may be a sidewalk that is part of a street that also provides vehicle access, or it may be a self-contained street created solely for pedestrians and bicyclists.*

17.28.010 Sidewalk Defined.

A "sidewalk" means the portion of the street intended for the use of pedestrians.

The public stairway is a pedestrian connection within a public right-of-way and it is the portion of that self-contained street intended for and used by pedestrians. Based on these considerations, the public stairway constitutes a sidewalk for the purposes of measuring building height.

Additionally, in the city's Transportation System Plan (TSP), all the rights-of-way abutting the site, including the pedestrian connection along the east side of the site, have a local service traffic street classification, and the pedestrian connection also has a local service walkway designation.

Accordingly, BDS have applied the height measurements from the lowest elevation of the sidewalk within 25 feet of the building (33.930.050/Figure 930-26), which is the sidewalk within the public right-of-way along the east side of the site, and next to the building locations within 15 feet of a lot line across a local service street from RF-R2.5 zones (33.120.215.B.2).

The summary table, below, identifies the height allowances for the nearby zones (per Zoning Code Table 120-3 and Table 110-3). At 75 feet, the proposed building will be 40 feet taller than the allowed RM1 base height or the allowed RM1 step-down height for buildings within 15 to 25 feet of the nearby R10 zoned properties, as well as up to 30 feet taller than the height allowances in the nearby RM2 zoned properties.

Zone	Base Height	Step-down Height
R10 (east, south and west)	30 feet	not applicable in R10 zone
RM1 (north and west)	35 feet	35 feet
RM2 (north and west)	45 feet	35-45 feet
RM4 (north)	75 feet	35-45 feet

With regard to the height better protecting the environmental resources, the findings in the City Council decision for LU 05-128719 EV EN M, state: *a structure with a larger building footprint, that meets the maximum allowed building height would have greater impacts on wildlife habitat and groundwater recharge, and scenic values at the site. Instead, allowing the height to be exceeded, results in a smaller footprint, having less environmental impact.* As such, the 2005 council decision supports the applicant's premise that a taller building will create less impact on the environmental resources than a shorter building with a larger footprint, and BDS Staff take no exception to the council's position.

However, when the purposes of the RM1 height provisions are considered, which are intended to provide options for privacy for neighboring properties and promote the general building scale of multi-dwelling development, BDS staff found the proposal fell short and asked if the applicant wished to consider additional options to temper the building height to address these issues.

In response, the applicant further revised the proposal to step additional portions of the north and east sides of the top two building floors back several additional feet (Exhibits C2, C3, C6, C8)), to provide some additional setback distance and moderate the additional height and potential privacy impacts relative to the nearby properties. The entire north building wall of Level 07 is setback 7 feet from the balance of that building plane; a portion of the north building wall of Level 06 is setback 10 feet from the balance of that building plane; and portions of the east building walls of Level 07 and Level 06 have been setback almost 5 feet from the balance of that building plane, as shown on Exhibits C6 and C7. Additionally, as noted above, the applicant added taller evergreen trees to the planter area between the building and the public stairway. The building is also proposed to be setback at least 21 feet from the abutting property to the north, which is located in the RM4 zone with a height allowance similar to what is proposed, and a planter area is included along the northern extent of the disturbance area to also provide some screening of the proposed development. The proposed building is also setback over 100 feet from the site's western property line and there is significant existing vegetation between the proposed development and the adjacent properties to the west. In general, given the site's steep topography and unique features, BDS Staff find the additional stepping back of several portions of the upper floors, along with dense plantings within the north and east planter areas, as well as plantings in the setbacks from neighboring properties to the south and west, will help to align the proposal with purpose of the RM1 base height and step-down height regulations, on balance.

Accordingly, this criterion is met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant proposes to construct a seven-story, 17-unit multi-family residence with a footprint of 15,600 square foot building footprint within an approximately 22,711 square foot disturbance area within the Environmental Conservation overlay zone. This proposal aims to minimize impacts on resources by combining housing and vehicle parking in a taller structure with a smaller footprint. The development is proposed to occur on an area of the site where there have been a series of environmental violations, and the balance of the site is to remain undisturbed.

During construction, the applicant proposes to avoid additional impacts with a variety of methods to isolate the work area, reduce erosion and storm runoff, and to protect remaining trees and other resources on the site. Mitigation is proposed to be pursued via an agreement with the *Forest Park Conservancy* for offsite resource enhancement work, and BDS Staff have identified opportunities to provide some additional native plantings within the proposed development area.

Based on the findings in this report, the proposal meets the applicable Environmental Review approval criteria and the applicable Environmental Modification approval criteria, with conditions. As such, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Environmental Review and an Environmental Modification to building height for a seven-story, 17-unit multi-family residence with a footprint of 15,600 square foot building footprint within an approximately 22,711 square foot disturbance area within the

Environmental Conservation overlay zone, in substantial conformance with Exhibits C1 through C8, and subject to the following conditions:

A. A BDS Permit is required for this project. The conditions listed below shall be noted on appropriate plan sheets submitted for permits (building, Zoning, grading, Site Development, erosion control, etc.) and completed as indicated. Plans shall include the following statement, "**Any field changes shall be in substantial conformance with approved LU 22-138259 EN M Exhibits C1 through C8.**"

1. Prior to any site work, temporary 6-foot tall chain-link fencing shall be secured to the ground with 8-foot tall metal posts along the western boundary of the disturbance area/work limits as shown on Exhibit C1.
2. Within the development area, a minimum of 25 percent of the plantings used for the perimeter plantings, shall be native species from the *Portland Plant List*. Nuisance species are prohibited. The tree species used to meet the tree removal/replacement standards (33.430.140.J and K) may be applied toward this requirement.
3. Prior to issuance of the building permit, a payment of \$46,688 shall be made to the *Forest Park Conservancy* for direct project implementation of measures to remove canopy weeds, improve soil composition, and to install native plantings within an at least 22,711 square foot area within the Forest Park ecosystem within the Willamette River watershed. Direct project implementation shall consist of: materials, equipment, and staff time needed to remove nuisance plant species and to purchase, install, maintain and monitor the restoration efforts.

B. Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

NOTE: Conditions from previous environmental violation reviews (LU 16-189632 EV and LU 05-128719 EV EN M) continue to apply, including those regarding nuisance plant removal; maintenance/monitoring for the remediation plantings; and recording of a no-build or conservation easement prior to permit issuance.

Staff Planner: Kate Green

Decision rendered by:  **on March 30, 2023**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 3, 2023

Note: In addition to the requirements of the Zoning Code, all uses and development must comply with other applicable City, regional, state and federal regulations.

This decision applies to only the City's environmental regulations. Activities which the City regulates through PCC 33.430 may also be regulated by other agencies. In cases of overlapping City, Special District, Regional, State, or Federal regulations, the more stringent regulations will control. City approval does not imply approval by other agencies.

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on May 3, 2022, and was determined to be complete on July 12, 2022.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on May 3, 2022.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended 222 days (Exhibit A17). Unless further extended by the applicant, **the 120 days will expire on: June 19, 2023.**

Some of the information contained in this report was provided by the applicant. As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Hearings Officer, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on April 17, 2023. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIx decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at

775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **April 17, 2023**, by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

A. Applicant's Statement

1. Initial Submittal, May 3, 2022
 - a. Land Use Narrative
 - b. Site Plan
 - c. Plan Set
2. July 12, 2022 Submittal
 - a. Completeness Narrative
 - b. Completeness Response
 - c. Architecture Plans
 - d. Civil Plans
 - e. Landscape Plans
3. July 13, 2022 Submittal
 - a. Revised Site Disturbance Plan
4. August 11, 2022 Submittal
 - a. FAR Exhibit
5. August 17, 2022 Submittal
 - a. Site Context Views

6. August 23, 2022 Submittal
 - a. Updated Civil Plans
 7. November 2, 2022 Submittal
 - a. Approvability Narrative
 - b. Approvability Response
 - c. FAR Height Memo
 - d. Legal Lot History
 - e. Revised Architecture Plans
 - f. Revised Civil Plans
 - g. Revised Landscape Plans
 8. November 15, 2022 Submittal
 - a. 2021 Monitoring Report for Remediations Plantings
 9. November 18, 2022 Submittal
 - a. Response to Staff comments
 10. November 30, 2022 Submittal
 - a. LU 17-102096 EN M decision
 - b. Housing Demand/Supply Projections from Portland Plan 2009
 - c. Conservation Easement Findings from LU 05-128719
 - d. Updated Civil Plans
 - e. Revised Site Survey
 - f. Preliminary Stormwater Report
 11. December 9, 2022 Submittal
 - a. Revised Site Survey
 12. January 13, 2022 Submittal
 - a. Applicant change / updated application form
 13. February 10, 2023 Submittal
 - a. Neighborhood Contact Certification
 - b. Arborist Report/Tree Plan
 - c. 2021 Monitoring Report for Remediation Plantings
 - d. Legal Lot History
 - e. Geotechnical Report, updated June 4, 2022
 - f. Incompleteness Response
 - g. Public Comment Response
 - h. Forest Park Conservancy: Off-site Mitigation Proposal
 - i. LU 17-102096: Exhibits
 - j. Preliminary Stormwater Report
 - k. Approvability Narrative
 - l. Approvability Response Memo
 - m. Updated Civil Plans
 - n. Update Architectural Plans
 - o. Updated Landscape Plans
 - p. Dunn Carney: Supplemental Narrative
 14. March 10, 2023 Submittal
 - a. Applicant memo re: ownership and setback modification
 - b. Ownership: Corporation Filings, Hugh Development LLC
 - c. Ownership: Articles of Organization, Hugh Development LLC
 - d. Ownership: Corporation Filings, HD Cardinell LLC
 15. March 28, 2023 Submittal
 - a. Revised Drawings
 - b. Dunn Carney letter
 16. March 30, 2023 Submittal
 - a. Revised Drawings
 17. Timeline Extensions
- B. Zoning Map (attached)
- C. Plans/Drawings:
1. Site Plan-Disturbance Area Limits
 2. East Building Elevation (attached)
 3. North Building Elevation (attached)

4. West Building Elevation
 5. South Building Elevation
 6. Floor Plan-Level 06 (attached)
 7. Floor Plan-Level 07 (attached)
 8. Preliminary Construction Management Plan (attached)
- D. Notification information:
1. Mailing list
 2. Mailed notice
- E. Agency Responses:
1. Bureau of Environmental Services
 - a. Amended Response
 2. Bureau of Transportation Engineering and Development Review
 - a. Amended Response
 3. Fire Bureau
 - a. Amended Response
 4. Site Development/BDS
 5. Urban Forestry/Parks
 - a. Amended Response
 6. Life Safety/BDS
 7. Division of State Lands
- F. Correspondence:
1. Mark Silverstein, July 20, 2022
 2. Lydia Taylor, July 23, 2022
 3. Dale Scott and Michael Rausch, July 28, 2022
 4. Harish & Bina Patel, July 28, 2022 and August 9, 2022
 5. Bob Quillin, August 4, 2022
 6. Jerald Powell, Goose Hollow Foothills League, August 5, 2022
 7. Frederic Cann, August 5, 2022
 8. Craig Koon, Southwest Hills Residential League, August 8, 2022
 9. Peggy Newby on behalf of Bob Quillin and Vanessa Morgan, August 8, 2022
 10. Stan Chesshir, August 8, 2022
- G. Other:
1. Original LU Application
 2. Letter to applicant re: incomplete application
 3. Wetland Notification Form: Division of State Lands

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).